



HOUSE OF LORDS

Leader's Group on Members Leaving the House

Report of Session 2010–11

Members Leaving the House

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The Leader's Group on Members Leaving the House

The Group was appointed “to identify options for allowing members to leave the House of Lords permanently”.

Our Membership

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Lord Hunt of Kings Heath
Lord Hunt of Wirral (Chairman)
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Executive Summary

In this report we conclude that provision for compulsory retirement is not appropriate (nor realistically achievable) in the current House. We conclude that there is a broad consensus that the current House is too big and that the overall size of the House should be reduced as soon as possible.

We recommend that the arrangements for Leave of Absence should be immediately strengthened in order to encourage those who, for whatever reason, are unable or unwilling to play a full part in the work of the House, to step down from active membership.

We recommend that a scheme to allow members to give notice of their intention to retire from membership of the House permanently on a voluntary basis should be agreed by the House and implemented as soon as possible. Introducing voluntary retirement will ease the immediate problem of the size of the House, as well as laying the foundation for a smoother transition to a reformed House.

Members Leaving the House

Introduction

1. We were appointed by the Leader of the House, as he announced in a Written Statement on 27 July 2010¹, “to identify options for allowing members to leave the House of Lords permanently”. We invited all members of the House to volunteer their views, and in November published a summary of the suggestions set out in the submissions we received, as the basis of further consultation². A debate in the House on 16 November 2010³ allowed us to listen further to the views of members, and since then we have received a number of additional comments. We are grateful to all those who have given us the benefit of their experience and understanding of the House, whether in writing, in private discussion or in debate. We are also grateful to Dr Meg Russell, Reader in British and Comparative Politics at the Constitution Unit, School of Public Policy, University College London, for a most helpful memorandum which we publish as Appendix 1 to this report.
2. As a result of this consultative process, we have identified a range of options. Inevitably, the range of opinion is equally wide and it is unlikely that a single solution will command the support of all. However, the common feature of all the views which have been put forward is a sincere concern for the effective functioning of the House, and for its reputation. With that in mind, we are confident that it will be possible to find a way forward. In this report, therefore, we examine further the advantages and disadvantages of the options which have been outlined, and make recommendations of our own. We invite the Leader of the House, to whom we make this report, to determine what the next steps should be, in consultation with the other party leaders and the Convenor of the crossbench peers.

Prospects for reform

3. As we acknowledged in our interim report, consideration of this issue takes place in the context of the Coalition government’s plans for “a wholly or mainly elected upper chamber”⁴. The cross-party committee chaired by the Deputy Prime Minister is preparing a draft bill which will then be subject to pre-legislative scrutiny before it begins its passage through Parliament.
4. Some members have suggested that, in that context, it is not desirable or productive to consider the options for retirement from the current House. Some think that to do so demonstrates a lack of commitment to more comprehensive reform; others that to make the current House more defensible weakens the case for more comprehensive reform; others still that any change in membership is the beginning of a slippery slope to a reform which they would not support.
5. We are of the view that the work of the Deputy Prime Minister’s committee makes our consideration of options for members to leave the House permanently no less timely or relevant. Legislation to reform the House will

¹ HL *Hansard* 27 July 2010 col WS147

² Consultation on Members Leaving the House, Interim Report of the Leader’s Group on Members Leaving the House, Session 2010–2011 HL Paper 48

³ HL *Hansard* 16 November 2010 cols 673–711

⁴ The Coalition: Our Programme for Government 20 May 2010

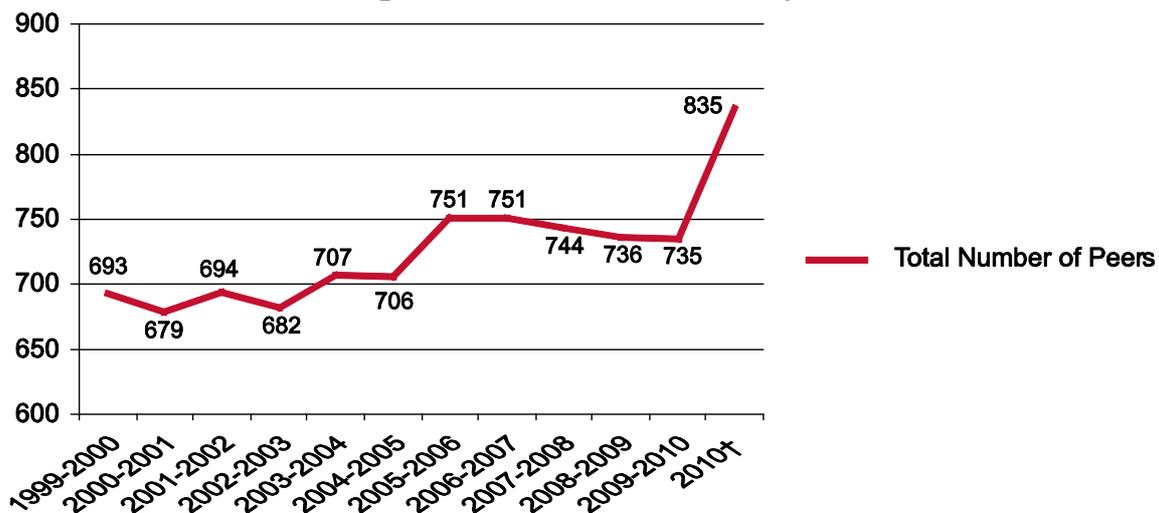
take time to be enacted, and in the meantime it is desirable that the existing House should be enabled to function as effectively as possible. Moreover, the Government intends that there should be an orderly process of transition to a reformed House, and we hope that our discussion of the likely consequences and implications of various options might assist that process.

The size of the House

6. At the heart of the issue we have been asked to consider is the fact that the House of Lords has no fixed number of members and no provision for a member to leave the House permanently. New peers are created in varying numbers, and at varying times, on nomination by the Prime Minister of the day and (since 2000) after scrutiny by the House of Lords Appointments Commission. There is no formal or commonly-accepted description of the role of a member of the House, and reasons for appointment are varied—to honour a significant contribution to public life, to enable Parliament to benefit from specific professional expertise or experience, to strengthen the capacity of one political party or another, or a combination of all of these. The graph shows how the size of the House has fluctuated in recent years.

FIGURE 1

Membership* of the House of Lords by Session**



*Includes Peers without Writ of Summons, on Leave of Absence, disqualified as senior members of the judiciary or disqualified as an MEP

**As at the end of each session

†Incomplete session, as at 10 December 2010. This potential total figure includes those Peers appointed in October and November 2010, including those not yet introduced.

7. The Constitution Unit has repeatedly drawn attention to the potential problem of the size of the House, noting the “potential conflict between rebalancing the House after every general election and keeping its size manageable”⁵. Since the partial reform of the House in 1999, this is an issue which subsequent considerations of further reform have sought to address in recommendations about the overall size of the House and fixed terms for members whether appointed or elected. During an extended period of

government by one party the potential problem was not acutely felt, but would become more urgent if governments were to change more frequently. The problem will persist if the desire to rebalance the composition of the Chamber makes it necessary at times to appoint more new members than can be expected to depart through ‘natural wastage’. In addition to political appointments, the House of Lords Appointments Commission periodically proposes new members. The general increase in life expectancy also plays its part in contributing to the growing size of the House.

Existing arrangements

8. A life peerage cannot be surrendered, and therefore life peers are not currently able to resign or retire from the House of Lords. Although the Peerage Act 1963 made provision for a hereditary peerage to be disclaimed for life, the House of Lords Reform Act 1999 repealed that measure in respect of those hereditary peers who successfully stood for election as members of the House. Therefore neither life peers nor the “excepted hereditary peers” are able to retire or disclaim their seat in the House.
9. The position of the Lords Spiritual is different. The Ecclesiastical Offices (Age Limit) Measure 1975 requires that bishops and archbishops vacate office at 70 years of age; when they retire from their sees, they cease to be members of the House (though bishops and archbishops have subsequently become life peers).
10. A variety of other legislative provisions disqualify certain classes of members from sitting and voting in the House in specified circumstances. Members who hold certain judicial offices are disqualified for as long as they hold that office⁶; life peers who are elected to the European Parliament as long as they hold that office⁷; a member who is adjudged bankrupt (or, in Scotland, whose estate is sequestered) until the bankruptcy or sequestration is terminated and its termination recorded in the Journals of the House⁸; a member convicted of treason until he has either suffered his term of imprisonment or received a pardon⁹.
11. The broad position that members of the House are unable to retire or disclaim their seat was temporarily varied by the provisions of the Constitutional Reform and Governance Act 2010. Section 41 of that Act provides that members of the House of Lords are to be deemed resident, ordinarily resident and domiciled in the United Kingdom for the purposes of income tax, capital gains tax and inheritance tax. For a transitional period of 3 months following the coming into force of the Act, it was open to members of the House of Lords to terminate their membership of the House and so choose not to be subject to that deemed status. Five members availed themselves of that provision before expiry of the three-month period on 7 July 2010, and so ceased to be members of the House. There is no further opportunity for members to leave the House under the provisions of the Act.
12. It may be seen from this account that, although there is no general provision for members to leave the House permanently, legislation has on a number of occasions and for a range of purposes varied the terms of membership of the

⁶ Constitutional Reform Act 2005

⁷ European Parliament (House of Lords Disqualification) Regulations 2008

⁸ Insolvency Act 1986

⁹ Forfeiture Act 1870

House. In particular, the precedent of the Constitutional Reform and Governance Act 2010 demonstrates that there is no constitutional obstacle to enabling a member to leave the House, and that the Consent of the Crown can be obtained to place the Crown's prerogative and interest at the disposal of Parliament for the purposes of such legislation. The bill which initiated that legislation (the Constitutional Reform and Governance Bill, as introduced in Session 2008-09) also contained a provision which would have allowed a member to resign by means of notice to the Clerk of the Parliaments, without any stipulation as to the circumstances in which such resignation could be effected. However, after the Bill had been carried over to Session 2009-10, the provision was removed in the "wash-up" prior to the Dissolution of Parliament, because of Parliamentary opposition.

13. Lord Steel of Aikwood has, in several consecutive sessions, introduced a private member's bill containing provisions for reform of the membership of the House. Part 3 of the current House of Lords Bill [HL] contains provisions to allow members to apply for permanent leave of absence; to deem a member who fails to attend the House during the course of a session to have taken permanent leave of absence; and to provide that a person granted permanent leave of absence shall no longer be a member of the House of Lords. These proposals have attracted a certain degree of support on every occasion on which they have been debated. However, for a variety of reasons the bills have not made significant progress. At the second reading of the current bill, Baroness Verma made plain the Government's reservations about the bill's proposals in the context of a wholly appointed House, at a time when the Government are committed to bringing forward proposals for a mainly or wholly elected second Chamber as a matter of priority¹⁰.

Implications of a growing House

14. The implications of an increasingly large House are various and, for the most part, not new. However, the significant increase in numbers this year has highlighted them most particularly. The differing implications are susceptible to differing solutions, so the recipe for change is not straightforward. It depends in large part on which issue is judged to be the priority to address. We seek in this report to identify options which, alone or in combination, could address a range of potential problems.
15. The first effect of a significant increase in numbers is the risk to the reputation of the House. It is unhelpful for the second Chamber to be regarded as of excessive size at a time when the Government intends that the number of members of the House of Commons should be reduced. The standing of the House as a serious Parliamentary forum is compromised by its apparently unchecked growth and by a lack of understanding of the reasons for further new appointments.
16. The second effect is the difficulty of conducting business effectively in such a large House. This is conspicuous in the shortage of seats in the Chamber (particularly at Question Time), but increased competition for opportunities to initiate business, reduced speaking times in time-limited debates, waiting lists for membership of select committees and increasing pressure on the mechanisms of self-regulation in the Chamber are all further indicators.

¹⁰ HL *Hansard* 3 December 2010 col 1736

17. A further effect of an increased number of members is pressure on the services provided by the House administration. Levels of demand for procedural, research and information services, as well as for practical resources such as accommodation and refreshment outlets, are all increasing. Provision of Parliamentary papers and ICT equipment and support also increases as numbers rise. Hitherto the administration has contained costs by means of efficiency improvements, but rising numbers of active members will inevitably eventually have consequences either for standards of service or for costs. The consequences of the new system of financial support for members are not yet clear and will, of course, depend on member take-up, but increased numbers are likely to mean increased overall costs in this area.
18. Debate on this subject has seen much comment on the number of members who, though not on Leave of Absence or otherwise disqualified, attend either not at all or very occasionally. Clearly, they have no impact on the pressure on business or services, and might therefore be said not to be a problem. On the other hand, they are significant to the reputational issues which we outlined above, and in particular to the perception that the House is not a serious place of business.

Support for change

19. Support for change — that is, for the implementation of some provision by means of which members might be enabled to resign or retire from the House — has been articulated repeatedly in debate, by members on all sides of the House. When on 29 June 2010 the Leader of the House first indicated that he would appoint a Group to consider this issue, one speaker after another welcomed it, recognising that a smaller House is not only desirable but imperative¹¹. On 16 November, again, one speaker after another agreed that change was necessary¹². Several speakers suggested that the House should engage actively with change, and seek a sensible way forward, since the alternative was to have change imposed without any input from the House.
20. A respected, but small, minority of members is of the view that no provision should be made for members of the House of Lords to retire. They hold that a peer, having received an honour bestowed by the monarch for life, is bound by that until death. They do not think it appropriate that a peer should be allowed to choose to give up the responsibility which they have previously accepted, and cite the terms of the Writ of Summons which every peer receives from the Queen as creating a lifetime obligation¹³.
21. We recognise that this view is strongly and sincerely held but we are not persuaded that it is a sufficient response to the situation in which we find the House. Given the less-than-perfect position in which the House currently finds itself, we see no advantage in declining to take the current position as

¹¹ HL *Hansard* 29 June 2010 cols 1661-1785

¹² HL *Hansard* 16 November 2010 cols 673-711

¹³ The terms of the substantive part of the Writ are as follows—“Whereas Our Parliament for arduous and urgent affairs concerning Us the state and defence of Our United Kingdom and the Church is now met at Our City of Westminster We strictly enjoining command you upon the faith and allegiance [for Lords Spiritual, the word “love” is substituted for “allegiance”] by which you are bound to Us that considering the difficulty of the said affairs and dangers impending (waiving all excuses) you be personally present at Our aforesaid Parliament with Us and with the Prelates Nobles and Peers of Our said Kingdom to treat and give your counsel upon the affairs aforesaid And this as you regard Us and Our honour and the safety and defence of the said Kingdom and Church and dispatch of the said affairs in nowise do you omit”

the starting point for change. There is nothing to be gained by wishing ourselves to be where we are not.

22. Dr Russell observed that previous successful reforms of the House of Lords “have been piecemeal responses to certain elements that the majority sees as no longer defensible. The inability to retire from the chamber may perhaps be the next indefensible element which is due for such a reform”¹⁴.
23. **On the evidence of our extensive consultations, we are confident that there is a broad consensus in the House in support of a provision to enable members voluntarily to leave the House permanently, in order that the overall size of the House may be reduced as soon as possible. We hope that this broad consensus might now be taken as the starting point for a way forward.**

Leave of Absence

24. At present, the only way in which a member who is unable or unwilling to attend the House may be released from the duty to do so is by application for Leave of Absence. The history and operation of the Leave of Absence provisions are set out in a memorandum from the Clerk of the Parliaments, printed as Appendix 2 to this report.
25. As the Clerk of the Parliaments explains, some members take Leave of Absence because a professional commitment makes it impossible for them to participate in the work of the House for a period, after which they anticipate returning to active membership. Others take Leave of Absence when ill-health or infirmity make continued attendance difficult, and in those circumstances often are unable to return to the House. In the absence of any provision for a member to leave the House permanently, Leave of Absence provides an opportunity for those who, for whatever reason, are unable or unwilling to play a full part in the work of the House, to step down from active membership.
26. **We recommend that the Leave of Absence arrangements should be strengthened, along the lines proposed by the Clerk of the Parliaments. At the beginning of each session of Parliament, in addition to writing to those currently on Leave of Absence, the Clerk of the Parliaments should write to those members who attended on 3 or fewer occasions in the previous session, inviting them to take Leave of Absence. The past practice, whereby Leave of Absence was automatically granted to those members who failed within a stipulated period to reply to such a letter from the Clerk, should be revived.**
27. The Clerk of the Parliaments also raised the possibility that the period of notice required for termination of Leave of Absence might be increased to 3 months. However, he concluded that this might serve as a disincentive to a member to take Leave. We agree that for some members contemplating taking Leave of Absence the possibility that they could terminate the Leave with only one month’s notice could be a reassurance. But on balance **we recommend that the period of notice required to terminate Leave of Absence should be extended to at least 3 months, to discourage members from terminating Leave once granted.**

¹⁴ Appendix 1

28. We hope that these improvements to the Leave of Absence arrangements can be implemented by the House straightaway. Given the expected length of the current session, **we recommend that the Clerk of the Parliaments should write as suggested in paragraph 26 above as soon as the provisions are agreed to, and not wait until the beginning of a new session to write for the first time.**

Voluntary retirement

29. Whilst reinvigoration of the Leave of Absence proposals would be helpful, the fact that a member on Leave of Absence may, for any reason or none, have the Leave terminated after due notice means that there is no certainty about a member's long-term intention. It creates doubt about the effective strength of the parties, as well as about the overall size of the House, and does not provide a way for members to leave the House permanently. In the circumstances in which the House currently finds itself, therefore, more is needed.
30. It is clear that for some members of the House, for whom the practicalities of continued participation in the work of the House might begin to be burdensome, an honourable and dignified means of retirement would be desirable. Other personal factors which might influence a member's view of his or her role in the House include a change in family circumstances, a change in location which makes regular travel to London difficult, or an awareness that the professional or public experience on which the member has drawn in contributing to the work of Parliament is no longer sufficient to enable a full part to be played. Any or all of these reasons, when combined with an awareness of the institutional interest of the House that the overall size of membership should be reduced, could make voluntary retirement attractive. As Dr Russell observed "it seems unfair on members that the honour of serving in the House of Lords should be a life sentence from which there is no escape"¹⁵. For a conscientious member who has played a full role in Parliament, and takes his or her commitment to the House seriously, an honourable release from obligation could be welcome.
31. **We recommend that the House should introduce arrangements to allow members to retire from membership of the House permanently, on a voluntary basis. Whilst we are advised that legislation would, strictly speaking, be necessary to override the entitlement to a Writ of Summons, we do not think this should be an impediment to responding to the desire in the House for early implementation of a scheme whereby a member could give notice of his or her wish permanently to leave the membership of the House.**
32. **We also recommend that the departure of a retiring member after distinguished service should be marked by the House in some suitable way, perhaps analogous to the ceremony of introduction by which the beginning of a member's Parliamentary career is marked. We suggest that the Lord Speaker might have a particular role to play in maintaining connections with retired members.**

The role of the party leaders and Convenor

33. If voluntary retirement is to make any significant impact on the number of members in the House, then its implementation will need to be very carefully

¹⁵ Appendix 1

handled. **We recommend that the party leaders in the House, and the Convenor of the Crossbench Peers, should take on an enabling role to offer advice, and make themselves available for discussion with those who might contemplate retirement. They could also seek assurances about the willingness or ability of members to participate fully in the House in future. We think it entirely reasonable that those who do not attend, or who attend only rarely, should be invited to consider their position.** Of course, there will be circumstances in which infrequent attendance will be inevitable, for example during a period of illness or for the duration of a particular responsibility, but these circumstances will usually be known to the leader concerned. **We also think it reasonable that those who attend as a matter of form, but do not contribute to the work of the House, should be invited to consider their position.** Of course, not all Parliamentary work entails speaking in the Chamber or asking questions; again, the leaders will be well-placed to make this judgment.

Balance in the House

34. One of the obstacles for anyone contemplating an end to their participation in the work of the House, whether at present by Leave of Absence or in future, potentially, by retirement, is the uncertain consequence for the balance of parties and groups in the House. Since there is no pre-determined size for the House, and no generally-accepted understanding of the proportions in which each party and group should be represented, a member contemplating retirement could have no firm expectation that a new member of their party or group would be appointed to take their place. A member might therefore be reluctant to take advantage of such provisions for fear that their party or group would be weakened, and there is certainly no incentive for party managers to encourage their members to retire.
35. Dr Russell suggested that a clearer principle for maintaining party balance in the Chamber should be established and that it should be policed by the House of Lords Appointments Commission. She suggested that such oversight would enhance transparency and maintain public trust in the appointments process¹⁶. We do not think it realistic to expect that this can be agreed separately from the wider reform debate.
36. However, **we recommend that the party leaders and the Convenor should develop a new understanding, in the light of the recent change of Government, about the proportion of seats in the current House on which it would be appropriate for each party or group to rely.** This will enable members contemplating retirement to have greater confidence about the effect their retirement will have on the ability of their party or group to function effectively.

Associate membership

37. As we noted in our interim report, it has been suggested that a new category of associate member should be created, to which members might opt to belong. The advantages of such a scheme are that it would reduce the overall size of the House, whilst keeping available the expertise of those who have had long experience of the House and have played a significant part in public life but now wish to reduce the scale of their involvement. It could complement a provision for voluntary retirement, providing a potentially

¹⁶ Appendix 1

attractive option for those who are unable to make a full commitment to the work of the House.

38. Various options have been suggested as to the opportunities which associate members might be afforded—
- to attend and speak only in proceedings off the floor of the House
 - to participate in business in the Chamber other than legislation
 - to be co-opted onto select committees
 - to be involved in informal discussion groups of specific issues before the House
 - to continue in membership of All-Party Parliamentary Groups.
39. Those who advocate such a scheme hold differing views about the classes of business which associate members should be permitted to take part in, and whether their participation should require specific invitation in each case; and about whether they should be entitled to claim an allowance for attendance.
40. The recommendation of a “two-tier” membership is not unprecedented: in 1968 a Government White Paper¹⁷ recommended that the House should have voting and non-voting members and that voting members should meet the condition of attending no fewer than one-third of sittings of the House. Whilst the White Paper was approved by a substantial majority in both Houses, the Government decided not to proceed with the bill to give effect to its proposals after over 80 hours in Committee of the Whole House in the Commons, because of the implications for the rest of the Government’s legislative programme¹⁸.
41. The Clerk of the Parliaments has advised us that legislation would be required to establish a scheme for associate members. Clearly, the constraints on legislative time, and the potentially controversial nature of such provisions, make this a significant obstacle to implementation. However, without legislation it would be open to an associate member to revert to “full” membership, because of their entitlement to a Writ of Summons, at any time. A “revolving door” of that kind would not be acceptable. Moreover, issues of privilege might arise unless legislation clarified the standing of proceedings in which associate members were permitted to participate.
42. The introduction of different categories of member, in the shape of a scheme for associate membership, would represent a very profound change for the House and could give rise to tensions between the two classes of members. Creating two classes of member might have the further effect of creating “second rank” business. Moreover, the increasing size of the House means that places on select committees and delegations are already much sought after. Levels of participation by “full” members in all areas of the House’s proceedings, whether on or off the floor of the House, might make it difficult to offer many opportunities to associate members.
43. For all these reasons **we recognise that it is unlikely that a two-tier membership could be implemented quickly. However, it is an option which could complement a provision for voluntary retirement and assist in bringing down the numbers in the House. It could also be of**

¹⁷ House of Lords Reform (Cmnd 3799) 1 November 1968

¹⁸ HC *Hansard* 17 April 1969 vol 781 col 1338

value in the transition to a reformed House, and we recommend that it should be further considered with those purposes in mind.

Financial provisions

44. The Leader of the House has ruled out “any payment for retirement for the time being. In the current context it would simply not be understood by the British people”¹⁹. Many members share the view that any form of financial provision for those who retired from the House would be publicly unacceptable. **We agree that it would be inappropriate for a reduction in the number of members of the House to occasion any additional cost to the taxpayer.**
45. As we acknowledged in our interim report, however, the financial circumstances of individual members of the House vary very significantly. Members receive no remuneration for their work in the House, and there is no pension scheme. Many members of the House have forfeited the opportunity for earnings and pensions elsewhere, in order to undertake public service in Parliament. These points have been made in debate and the possibility has been suggested of compensation for those who, by retiring, would forgo the possibility of claiming substantial sums in financial support.
46. The idea has also been introduced in debate of an “invest-to-save policy”, whereby a calculation could be made of the marginal costs of support for each additional member in the House and that proportion of the budget of the House could then be offered as an incentive to a member to retire. We are attracted by this “value for money” argument and think it likely that, with appropriate actuarial and accountancy input, it would be possible to identify the potential saving to the public purse which could be achieved if the membership of the House were to be reduced significantly without delay. From this potential saving it would be possible to offer either a modest resettlement payment on retirement, or a periodic payment on the lines of a pension, without incurring any additional long-term cost to public funds.
47. **We recommend that a reduction in the number of members of the House should result in an overall saving to the taxpayer. We recommend that the possibility of offering a modest pension, or payment on retirement, to those who have played an active part in the work of the House over a number of years, should be investigated in detail, though on condition that this should come from within the existing budget for the House and should incur no additional public expenditure. We further recommend that any such payment should be available only to those who choose voluntary retirement within a limited period after its introduction.**
48. We recognise that a modest payment of the order which might be possible as an “invest to save” measure would not materially improve the position of those whose participation in the work of the House over many years has prevented them from taking up remunerative work and securing an adequate pension. **We recommend that a fund, resourced entirely by voluntary contributions from members and at no cost to public funds, should be established to assist retired members who might otherwise experience financial hardship. The fund should be administered by the Lord Speaker, with advice as appropriate from the leaders of the parties in the House and from the Convenor of the Crossbench Peers.**

¹⁹ HL *Hansard* col 675

Compulsory retirement

49. As we noted in our interim report, our terms of reference envisage only voluntary retirement, but many members who responded to our consultation advocated arrangements by which members could be required to retire, and therefore we consider those suggestions here. In consideration of conditions under which compulsory retirement from the House might be imposed, members have discussed criteria of age, length of service and record of attendance. Strong and plausible arguments have been deployed in support of each of these criteria, both in debate and in other responses to our consultation. Equally, there are strong arguments against each.
50. Those who would favour compulsory retirement from the House on reaching a specified age cite the existence of an upper age limit for most other public positions including the judiciary. They suggest that increasing life expectancy creates implications for a lifetime commitment that might not have been foreseen at the outset, and that with the passage of time the expertise for which a member was appointed to the House inevitably becomes less current and applicable. On the other hand, the implementation of an upper age limit would deprive the House of much wisdom and experience. It would also be contrary to the increasing trend elsewhere in both the public and private sectors to abolish fixed retirement ages, and to legislation to prevent discrimination on grounds of age.
51. Those who favour compulsory retirement after a fixed length of service suggest that this would ensure that the expertise on which the House relies was regularly renewed, and that it would facilitate the appointment of younger members. It was also suggested that a fixed length of service would open up the membership of the House for a wider range of people each for a shorter average term, and that this would be to the benefit of the work of Parliament. On the other hand, it is argued that such a measure would deprive the House of some of its most active members, and could alter the capacity of the House to take the long view, so eroding one of the characteristics which most usefully distinguishes it from the House of Commons.
52. The criterion for compulsory retirement which commanded most widespread support was that of infrequent attendance. There is an increasing expectation in the House that every member should “pull their weight” and that, in a serious Parliamentary chamber, there is no room for those who are unwilling to fulfil their role as Parliamentarians. On the other hand, it was argued that such a criterion would result in the departure from the House of members who, because of commitments in other walks of life, attend only irregularly but whose contributions are greatly valued when they do. It is also true that a provision to exclude infrequent attenders would do nothing to solve the problem of overcrowding, and could have the perverse effect of encouraging some to attend more frequently than they would otherwise have done. We also acknowledge that frequent attendance is not the same as constructive participation in the work of the House.
53. There is some support amongst members for a variety of schemes by which the parties and groups in the House should elect those who should be excepted from compulsory retirement, to achieve an agreed optimum number. It is argued that that would produce a logical and reasonable selection of those who are active and well-regarded, and that there would be an element of self-selection as well since many might choose not to stand for election. Those who oppose a scheme of this sort argue that the resulting

“party beauty contest” would be unseemly, that inappropriate power would be wielded by the party whips and that the inevitable electioneering amongst members would adversely affect the character and functioning of the House.

54. It is clear from our consultations that any basis for compulsory retirement would be resisted as unfair — in breaking faith with the spirit of the grant of a life peerage — and as arbitrary and counter-productive. It is most unlikely that the House would agree to compulsory retirement other than in the context of full reform, and any attempt to implement it would be likely to result in a protracted and unseemly Parliamentary struggle.
55. For all these reasons, **we do not recommend any of the options for compulsory retirement from the House in the current circumstances. However, we recognise that, if very few members opt to retire voluntarily, the pressures for compulsory retirement will become more acute and the arguments more compelling. Moreover, the transition to a reformed House could be achieved more readily if voluntary retirement were to be widely accepted. If it is not, the transition is likely to be more disruptive for the whole House as well as for individual members.**
56. **Whilst we do not think that compulsory retirement would be desirable in the context of the current House, we agree with those who suggest that there is no room for those who are unwilling to fulfil their responsibility as members of Parliament. It is for that reason that we recommend that those who attend very infrequently, without good reason, should be encouraged to take Leave of Absence or, once enabled to do so, to retire.**
57. **We hope that implementation of a detailed scheme for voluntary retirement will result in a sufficient reduction in the number of members of the House to secure an orderly and smooth transition (which will inevitably be a protracted process) to the reformed House which will be proposed in draft legislation. If this proves not to be the case, then further provision will be necessary. In those circumstances we suggest that, notwithstanding some of the potential difficulties outlined above, further consideration should be given to an arrangement whereby the different groups in the House elect those who should remain. We suggest that this is the least arbitrary course, and would result in the selection of those whose work in Parliament commands the respect and support of their peers.**

Arrangements after retirement

58. Most of those members who support a provision for voluntary retirement have suggested that those who retire should retain their titles. **We recommend that, since a life peerage is conferred for life, retirement from membership of the House should not affect the use of a title.**
59. Many members also suggested that retired members should continue to have some access to Parliament and we agree that this would be a reasonable expectation. In 1999, the House decided that those hereditary peers excluded under the House of Lords Act should be entitled to continue to use certain facilities of the House. In the event, that entitlement has been exercised to a very limited extent, and has not affected the provision of services to members of the House. The differing circumstances of departure make it likely that members who retired voluntarily would wish to maintain a more lively connection with the House, and **we recommend that members**

who choose to retire should continue to receive a Parliamentary pass and be entitled to use certain of the facilities of the House of Lords. We consider that this is an appropriate arrangement to make for those who, acknowledging the institutional interest of the House that the number of members should be reduced, opt to retire. We also recommend that consideration be given to designating one of the galleries in the Chamber for the use of retired members.

Franchise for retired members

60. A crucial detail necessary to any scheme for the voluntary retirement of members of the House was drawn to our attention by a member who, for reasons of age and increasing infirmity, is currently on Leave of Absence. She pointed out that members of the House are not entitled to vote in a General Election, since they have the opportunity to influence public affairs through their actions in the House. Clearly it would not be appropriate for members retiring from the House to be entirely disenfranchised. **We recommend that members who permanently renounce their entitlement to sit and vote in the House of Lords should be entitled to participate in Parliamentary elections, although we recognise that this would require legislation.**

Need for review

61. In considering all the possible options for allowing members to leave the House of Lords permanently, we have recognised the difficulty of predicting what the consequences might be. Having recommended an entirely voluntary route (at least for the time being) we cannot predict how many members might choose to leave the House, or what the impact on the overall composition might be. **We recommend that the consequences of any changes arising from our recommendations should be reviewed at an early date and, in any event, in the light of future proposed legislation for reform of the House.**

Future appointments to the House

62. Our terms of reference relate exclusively to options for members to leave the House, but in response to our consultation members have referred to a number of matters relating to new appointments to the House. Whilst these are beyond our terms of reference, they are significant to the potential impact of our recommendations, and we therefore consider them in the paragraphs which follow.
63. One of the reasons for an excessively large House is the variety of reasons for which new life peers are appointed. In consultation, most members agreed that it was no longer appropriate for a seat in Parliament to be conferred on anyone simply as an honour, without the expectation that they would contribute constructively to the work of Parliament. **We recommend that in future the honour of a life peerage should not automatically entail appointment to membership of the House, which should be reserved to those who are willing to make a significant commitment to public service in Parliament.** This recommendation is well-precedented, having been previously suggested by the Royal Commission on the Reform of the

House of Lords (chaired by Lord Wakeham) and the House of Commons Public Administration Committee²⁰.

64. As long ago as January 2000, the report of the Royal Commission on the Reform of the House of Lords recommended that future appointments to the House should be for a limited term, rather than for life²¹. Had this recommendation been implemented the problem which the House now faces would be greatly reduced. **We recommend that any further appointments made to the House in the absence of wider reform should be for a limited term, renewable if necessary. This would ensure that the intrinsic problems in the composition of the current House do not continue to be exacerbated.**
65. Dissatisfaction with the increasing size of the House has inevitably been heightened by the number of new appointments made since the change of Government in May 2010. Dr Russell describes as an “unrealistic and politically unrealisable goal” the provision of the coalition agreement that appointments should be made with the objective of creating a second chamber reflective of the share of the vote secured by the political parties in the last general election²². She suggests instead that a balance amongst new appointments would be a realistic objective²³.
66. In debate and in comments to us, many members have emphasised that consideration of arrangements for members to leave the House is compromised by the continuing appointment of substantial numbers of new peers. A variety of suggestions have been made to address the point, including a moratorium on any new appointments to the House until the number of members has dropped naturally to an agreed level; a temporary cap on the number of new appointments; and a policy of one-in one-out, as is the case with the Lords Spiritual. Other arrangements to avoid the need for an incoming government to rebalance the House by means of new appointments have also been suggested, for example by an outgoing government undertaking that a certain number of their members would not exercise their right to vote in the House.
67. **Whilst we cannot recommend that there should be a moratorium on new appointments to the House — since, while the purpose of the House is to provide expertise, we must ensure that that expertise is refreshed and kept up to date — we do urge that restraint should be exercised by all concerned in the recommendation of new appointments to the House, until such time as debate over the size of membership is conclusively determined.**

²⁰ A House for the Future, (Cm 4534); The Second Chamber: Continuing the Reform, Public Administration Committee, 5th Report 2001-02, HC 494

²¹ A House for the Future, (Cm 4534)

²² Appendix 1

²³ Dr Meg Russell, 22 November 2010, <http://www.ucl.ac.uk/constitution-unit/constitution-unit-news/221110>

APPENDIX 1: MEMORANDUM FROM DR MEG RUSSELL, READER IN BRITISH AND COMPARATIVE POLITICS, CONSTITUTION UNIT, SCHOOL OF PUBLIC POLICY, UNIVERSITY COLLEGE LONDON

You have asked me to submit some thoughts regarding the task given to Lord Hunt of Wirral and his Group “to identify options for allowing Members to leave the House of Lords permanently”. I hope that at least some of the points below are helpful to your work. They are informed by the research that I in particular, and the Constitution Unit more broadly, have conducted on the House of Lords and options for its reform over the last 12 years and more. I would of course be happy to provide more detailed thoughts on some of these topics should you require.

The desirability of allowing retirement from the Lords

There are two principal reasons why it is desirable to introduce provisions allowing members to ‘retire’, or leave the Lords permanently. The first is simply that some members of the Lords would like to leave. The second is that under the current system the size of the chamber is continually growing, in a manner that may soon become unsustainable.

On the first of these points, members clearly do already have the option of taking ‘leave of absence’ if they feel that they can no longer contribute to the work of the chamber. It is not my place to speak for members, and no doubt the Leader’s Group will take evidence from members about the pros and cons of the leave of absence arrangements. But there are some obvious difficulties if this remains the only route out of the chamber (save for death) for most members.

The principal problem is that if a member takes leave of absence there is no certainty whether or not they will return. Many members do return from leave of absence, sometimes even when they have not expected to do so. Most famously Lord Phillips of Sudbury announced his ‘retirement’ from the Lords in 2006, only to return in 2009. These uncertainties make it unclear whether those on leave of absence should still be considered ‘members’ of the chamber for accounting purposes. At a minimum their presence on lists of members, etc, may make numbers in the Lords look more swollen than they are. But more importantly, the party balance in the chamber may be adversely affected, in ways that cannot be properly resolved when members have not permanently departed. For example, if 20 Conservative peers took leave of absence the Conservative leadership would feel their loss, but at the same time have difficulty defending the appointment of more Conservative peers to take their place. In turn, members themselves may feel that they are letting their party/group down if they take leave of absence, as there is no guarantee that they will be ‘replaced’ and their group may thereby be weakened. While it may be right that a peerage should be for life, it seems unfair on members that the honour of serving in the House of Lords should be a life sentence from which there is no escape. The issues of party balance, and links to the peerage, are both explored further below.

The second argument for introducing a retirement option is the ever-growing size of the House of Lords. When the bulk of hereditaries departed in 1999, the chamber was left with 666 members. Today it has 750 members (according to our records, and excluding 16 members on leave of absence). Since the last — extremely large — influx of appointees was dominated by Labour nominees, the coalition parties may soon wish to appoint more members. The chamber could therefore soon be well over 100 members larger than it was just 11 years ago. Again, it is not my place to speak about the administrative difficulties that this creates, as I am sure that you will hear evidence on this from the House authorities. You may also hear about resultant political difficulties from members

themselves. But there is, at the very least, a public relations problem if the chamber is seen to get ever larger. It is already, by a long way, the largest second chamber in the world.¹

The Constitution Unit has pointed out for many years that there is a looming problem over Lords numbers.² In particular, as we indicated in 2003, ‘There is a potential conflict between rebalancing the House after every general election and keeping its size manageable’ (Russell and Hazell, p.12). This has not been a great problem over the past 10 years, as Labour remained in government for so long. Even in these circumstances the numbers have grown, however, while any rebalancing in the direction of the present government would clearly make matters worse. One solution would clearly be greater restraint in terms of appointments: both on the part of the political parties and the House of Lords Appointments Commission. Another element that could help would be a greater focus on appointing older members, whose time in the House is likely to be shorter (on this point, however, the trend seems to be if anything the reverse). But even if these forms of restraint are applied there will remain a problem, if a desire for political rebalancing makes it necessary at times to appoint more new members than can be expected to depart through ‘natural wastage’.

Necessary restrictions should retirement be introduced

It therefore seems desirable to look at the options for retirement from the House of Lords, and hence the work of the Leader’s Group is to be welcomed. But before turning to mechanisms by which this might be achieved, there are two essential prerequisites which I strongly believe must be built into ANY system of ‘retirement’ or permanent departure from the chamber.

Restrictions on standing for the House of Commons

The question of restricting departing peers’ ability to stand for the House of Commons became controversial during the discussion of the Constitutional Reform and Governance Bill in the last parliament. That this matter became characterised in terms of desirability or otherwise of a ‘Mandelson clause’ is deeply unfortunate. The idea had been on the table for a long time (long before Lord Mandelson was appointed), and for very good reasons. The linking of this idea to a particular individual thus unhelpfully politicised debate on what is an extremely important point of principle.

The Royal Commission on the Reform of the House of Lords proposed in 2000 that ‘Members of the reformed second chamber should not be eligible for election to the House of Commons until ten years after their term of membership ends, whether or not they serve out their full term.’³ Their argument was that ‘Would-be career politicians should not be encouraged to see membership of the second chamber as a springboard to membership of the Commons.’⁴ The Constitution Unit strongly welcomed this conclusion, which chimed with (and may have been

¹ In 2000 the next largest second chamber was the Italian Senate, at 326 members (Meg Russell, *Reforming the House of Lords: Lessons from Overseas*, Oxford University Press (2000). For latest figures see: <http://www.ipu.org/parline-e/parlinesearch.asp>

² See Ben Seyd, *Rebalancing the Lords: The Numbers*, Constitution Unit briefing 18 (1998); Ben Seyd, *A Transitional House of Lords: The Numbers*, Constitution Unit briefing 45 (1999); Meg Russell and Robert Hazell, *Next Steps in Lords Reform: Response to the September 2003 White Paper*, Constitution Unit briefing 105 (2003).

³ *A House for the Future*, The Stationery Office (2000), Recommendation 76.

⁴ *Ibid*, paragraph 12.21.

informed by) conclusions drawn from my own study of the Irish Senate. In Ireland it is common for TDs (MPs) who lose their seats to be immediately appointed senators, and for young politicians to serve an apprenticeship as senators before running for the Dáil. My research noted that in 1997, 23 of the 60 members of the Irish Senate had been candidates in the recent Dáil elections, while 16 members of the previous Senate had been elected to the Dáil.⁵ Although this is very far from present experience with the Lords, a rule change allowing peers to run for the Commons soon after vacating their seats could encourage party leaders to appoint more younger members who sought to serve a short term before running for the Commons. Party leaders might even, as in Ireland, feel encouraged to appoint recently defeated MPs on a ‘temporary’ basis to the Lords until they could fight their Commons seats again. Introducing retirement without a limitation on subsequently standing for the Commons could therefore inadvertently completely change the culture of the current House, in very undesirable ways.

This danger has been seen by others as well as the Royal Commission. In 2002 the House of Commons Public Administration Committee likewise recommended a period of 10 years before a departing second chamber member could stand for the Commons.⁶ In 2005 a cross-party group of senior MPs led by Paul Tyler, in a report published by the Constitution Unit, recommended a similar period of five years.⁷ The government’s 2007 White Paper accepted this recommendation, though it did not find its way into the Constitutional Renewal and Governance Bill two years later.⁸ I believe that it is vital that such a provision — for at least five years, ideally ten — should be built into any future arrangements for retirement from the House.

Requirements for party balance

Another issue which has been less widely canvassed with respect to the possibility of retirement from the present House (although clearly discussed with respect to the composition of a reformed House) is party balance. As indicated above, one of the difficulties with the present ‘leave of absence’ system is that if members depart on leave of absence this may leave the numbers in their party/group depleted. Similarly, I understand that one of the concerns amongst members with respect to the provisions in the Constitutional Reform and Governance Bill was that there was no guarantee that if they retired they would be replaced like-for-like by new members of their party/group. Whilst obviously there may be times when such like-for-like replacement might not be justified (i.e. if a given group was already greatly overrepresented in the House), it would be self-defeating if members felt unable to take advantage of new retirement provisions for fear of weakening their group. It is therefore important that any new system makes clear how decisions will be taken regarding new appointments, and the resultant party balance of the chamber.

In recent years there has been a growing expectation that appointments to the Lords will be made in a way which is broadly fair, if not exactly proportional, to the parties and their electoral strength. The Royal Commission proposed that appointments in a reformed House should be done in a way ‘which matches the

⁵ Meg Russell, *Reforming the House of Lords*, op. cit., p. 91-2.

⁶ Public Administration Committee, *The Second Chamber: Continuing the Reform*, Fifth Report of Session 2001-02, House of Commons (2002).

⁷ Paul Tyler, Ken Clarke, Robin Cook, Tony Wright and George Young, *Reforming the House of Lords: Breaking the Deadlock*, Constitution Unit briefing 119 (2005).

⁸ *The House of Lords: Reform*, The Stationery Office (2007).

distribution of votes between the parties at the most recent general election.⁹ This was within a context of a new second chamber, where members served fixed terms, and where one third of the members were appointed at a time while one third simultaneously retired. Even under this arrangement strict proportionality across the *entire* chamber would never be achieved. More recently, the coalition agreement went far further, suggesting that until such time as the Lords was fully reformed ‘Lords appointments will be made with the objective of creating a second chamber reflective of the share of the vote secured by the political parties in the last general election.’¹⁰ This is, frankly, an unrealistic and politically unrealisable goal. As suggested at the time by Michael Crick of Newsnight, taken literally it would require appointment of around 200 new peers (and would now require more than this, following the many new Labour peers added subsequently).¹¹ Any attempt to pursue the coalition’s stated goal would thus result in the size of the chamber ballooning in an exponential and unsustainable way. In contrast, a commitment along the lines that the Royal Commission proposed — to simply balance among *new appointments* — would be more manageable. Such a public commitment, which could only be made by the Prime Minister, would probably be necessary for a retirement system to function effectively, for the reasons given above. It would also be desirable to keep a cap on Lords numbers, which is one of the main reasons that a retirement system is being considered.

Compulsory or voluntary retirement?

There are broadly two approaches that the Leader’s Group may wish to take to introducing retirement: in terms of a voluntary and/or a compulsory scheme. Under a voluntary scheme, as proposed for example in Lord Steel’s Bills, and the government’s Constitutional Reform and Governance Bill, a provision would be introduced allowing members to retire if they wished, but with no obligation to do so. This approach, at a minimum, seems desirable for reasons already indicated. Should members of the House wish to permanently retire, they should be entitled to do so (so long as the aforementioned restrictions have been put in place). This would be adequate to address the first of the two reasons given above for which retirement is being considered.

In terms of the second reason, it has often been suggested that in order to encourage members to retire in sufficient numbers to make a worthwhile difference to the size of the House, some financial incentives must be provided. As an outsider it is difficult to judge this reliably, and the Leader’s Group will no doubt want to take evidence on this point from members and their whips. But it is clearly the case that many members of the House have forfeited earnings, and/or pensions, in order to serve in the chamber. Consequently, some may be dependent on Lords allowances in order to comfortably survive, and thus feel unable to take retirement. This is a question which the Leader’s Group will no doubt want to consider, but it in itself should not prevent the introduction of a voluntary retirement scheme for those who feel that they can use it.

Options for compulsory retirement

Should compulsory retirement be considered desirable, perhaps because voluntary retirement is not expected to yield enough volunteers, there are various options for building this into the system. The most obvious are age limits or term limits, both

⁹ Op. cit., recommendation 70(g).

¹⁰ *The Coalition: Our Programme for Government*, 20 May 2010.

¹¹ http://www.bbc.co.uk/blogs/newsnight/michaelcrick/2010/05/a_strange_situation_at_the_hou.html

of which have been widely discussed in recent years. A third option is some kind of ballot system.

Age limits

Introducing an age limit for membership of the House of Lords would obviously bring it more closely into line with long-established practices for “retirement” in the world of work. It would also bring the Lords into line, for example, with the senior judiciary: where judges face automatic retirement at age 70. But based on the House at the present day, a compulsory retirement age of 70 would require 351 members of the chamber to depart: almost half of its total membership. A retirement age of 75 would affect 221 current members. Even a retirement age of 80 would affect 115 members.

A retirement age could therefore be seen as an effective means of significantly shrinking the size of the House of Lords. But it would also result in the loss of large numbers of members who still have much to contribute. The Lords, of course, is a place to which many people “retire” from previous roles: for example from the House of Commons or the civil service. A relatively low retirement age (of, say, 70) would leave less space for these members in future: amongst the current House at least 14 peers were appointed when already aged over 70, and at least 72 when aged over 65. Yet the contribution of peers recently ‘retired’ from public life is widely appreciated and helps form the ethos of the current House. On the other hand if a retirement age was designed to remove more infirm or less productive members of the chamber there is no clear age at which it could be set. Some may fall into poor health in their 60s or early 70s, while others are still contributing vigorously in their 80s.

While a retirement age may be in line with established practice in the world of employment, it should of course also be noted that age discrimination legislation and pressure on pensions is gradually eroding this practice. For all of these reasons a retirement age for the House of Lords does not seem an obvious way to proceed, and if set it would need to be set relatively high. Notably, few have suggested this option to date.

Term limits

The suggestion of fixed terms has, in contrast, featured widely in debates on the longer term reform of the House of Lords. The Royal Commission suggested fixed 15 year terms for appointed members, with the possibility of a second term of appointment (at the discretion of the House of Lords Appointments Commission).¹² It also recommended that life peers appointed after its report was published should be ‘deemed to have been appointed to the reformed second chamber for a period totalling 15 years from the award of their life peerage’, as these peerages were accepted in the knowledge that reform was likely to follow.¹³ This recommendation was never explicitly taken up, however. The Public Administration Committee proposed ten-year terms for appointments, while the 2005 report by the Tyler group of MPs suggested terms equivalent (in normal circumstances) to three House of Commons terms, with the possibility of one reappointment. The government’s 2007 White Paper suggested 15 year non-renewable terms, while its 2008 White Paper suggested appointment (should appointments continue) for 12-15 year non-renewable terms.¹⁴ It is therefore

¹² Op. cit., recommendation 74.

¹³ Ibid, recommendation 103.

¹⁴ 2007 op. cit., *An Elected Second Chamber: Further Reform of the House of Lords*, The Stationery Office (2008).

widely agreed that appointments in a reformed chamber would cease being for life, but be for long terms, possibly with limited opportunities for renewal.

During the passage of the recent Constitutional Reform and Governance Bill there were moves by some members in the Commons to introduce a provision for 'term peers' as originally proposed by Andrew Tyrie and George Young in a Constitution Unit report in 2009.¹⁵ This provision, moved in an amendment by Andrew Tyrie and Keith Vaz, and supported by the Conservative and Liberal Democrat frontbench, would have allowed creation of peerages for the duration of (normally) three House of Commons terms.¹⁶ The measure was however opposed by the then government.

A move from life appointments to the House to fixed-term appointments would be an obvious way of containing its growing size. There would be a need to take care in designing such a system to ensure that continuity and expertise in the chamber was not lost, probably by allowing at least some provision for reappointment. However, as emphasised by the Royal Commission, the power to make such reappointments would best be given to the House of Lords Appointments Commission, to avoid the political party leaders increasing their hold over the chamber and its members. The introduction of fixed term appointments would be a significant change, but is probably desirable in the medium term, especially if moves towards an elected replacement for the House of Lords are further delayed.

Ballots

A final option for retirement was put by Paul Tyler's group of MPs in 2005, and has also been suggested by the Public Administration Committee and others. This would introduce a requirement that a certain proportion of each group in the House retired on a given date, with the decision on which members departed to be taken if necessary by a ballot within each group. This proposal was modelled on the arrangements for the departure of the hereditary peers in 1999. Under these proposals one third of each group was to be required to depart in the first instance, to be replaced by elected members. At the second stage, one half of the remaining life peers would similarly be required to retire.¹⁷ Some modification of these arrangements could be considered in order to reduce the size of the House, but might prove cumbersome in practice.

The role of the House of Lords Appointments Commission

Although the Leader's Group has not been explicitly asked to consider the role of the House of Lords Appointments Commission, some aspect of its work may touch on the Commission's role and responsibilities. Most notably, if (as I have suggested) a clearer principle for maintaining party balance in the chamber is set down, it would be sensible for this to be policed by the Commission. If reform went further, and fixed terms were introduced, with some option for renewal, this would again be best managed by the Commission. In both cases this would enhance transparency by removing patronage powers from the party leaders. It would therefore minimise the risk of accusations of gerrymandering, in the case of party balance. Similarly in the case of reappointment, it would avoid accusations of greater party control and patronage over members of the chamber. This seems highly desirable in order to maintain public trust in the appointments process.

¹⁵ *An Elected Second Chamber: A Conservative View*, Constitution Unit briefing 146 (2009).

¹⁶ See *House of Commons Hansard*, 26 January 2010, column 732.

¹⁷ *Breaking the Deadlock*, op. cit.

Many have obviously suggested that the House of Lords Appointments Commission should be put on a statutory basis. This may be desirable, but it is not in itself essential in order for the Commission to be given additional powers. Such powers could be given to the Commission directly by the Prime Minister, as they were when it was first established in 2000.

The link between membership and the peerage

Allowing members to retire from the House of Lords might potentially raise questions about the life peerage, as members would no longer necessarily sit in the chamber for life. In the short term there is no reason why this necessarily should cause difficulty. Convention changed quickly in 1999 when the great majority of hereditary peers left the chamber, and it is now possible to be a hereditary peer who is a member of the House of Lords, but also a hereditary peer who used to be a member, or indeed who has never been a member. The same adjustment could equally easily be made with respect to life peers.

In the medium term, and particularly if there is a move to fixed term appointments to the chamber, the obvious next step would be to break the link between holding a peerage and being a member of the House of Lords. Such a change has been suggested by numerous bodies: including the Royal Commission, the Public Administration Committee, and the Tyler group of MPs. The principle was accepted by the government as early as 2001.¹⁸ Such a move would not be a threat to the peerage itself: peerages could continue to be given as honours. But it would help to clarify that membership of the House of Lords is not just an honour, it is also a job which requires at least some commitment of time. Of course members of the House of Lords could, like anyone else, be given peerages in recognition of past service. But breaking the necessary link between the peerage and second chamber membership would help clarify that the Lords is a working chamber, rather than a historic curiosity.

The challenge of achieving reform

It is finally worth making a few remarks about the nature of reform. The Leader's Group has been given the relatively limited task of considering how members may depart the House of Lords. This is, of course, greatly complicated by the surrounding context on 'wholesale' or 'long term' House of Lords reform. The coalition is committed to 'bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation' by the end of the year.¹⁹ It is therefore unclear whether the Leader's Group is required to make recommendations which will function alongside, or in place of, such proposals. The questions of retirement in order to maintain the current House in a sustainable state, or in order to force departures to clear space for future elected members, are rather different. However, some of the same mechanisms may apply in both cases. The Leader's Group may want to offer alternate recommendations for both.

As I have indicated, even if the present House continues, the introduction of retirement provisions of some kind is desirable. However, it must be noted that the previous government attempted to introduce such provisions in its Constitutional Reform and Governance Bill, and that these provisions failed. Eventually they were blocked in the 'wash up' at the end of the last parliament, but they had earlier faced some resistance in both chambers. The provisions were resisted by some

¹⁸ *The House of Lords: Completing the Reform*, The Stationery Office (2001).

¹⁹ Coalition agreement, op. cit.

members who took them as an admission that ‘wholesale’ reform was not going to happen, and indeed some such members believed that minor ‘tidying up’ provisions to make the existing House more defensible would make larger-scale reform less likely. At the same time, some other members resisted the proposals on the basis that they were the beginning of a ‘slippery slope’ to larger-scale reform.

The Leader’s Group must therefore recognise that any recommendations that it makes, however sensible, will face some opposition. Reforms which require primary legislation, in particular, may prove extremely difficult to agree and to implement. The current House of Lords continues to be seen as a ‘transitional’ and ‘unreformed’ chamber which is on the brink of large-scale reform. Yet this is not a new state of affairs: the chamber arguably spent the entire 20th century in a similar condition. The history of House of Lords reform demonstrates that reform happens rarely, and ‘wholesale’ reform has yet to occur — despite being promised for at least 99 years. The key reforms of the 20th century: in 1911, 1949, 1958, 1963 and 1999, were all ‘partial’ and ‘temporary’ measures, to change single elements of the chamber’s power or membership, until a more settled or ‘long-term’ solution could be reached. Thus while House of Lords reform is rarely off the political agenda, the few successful reforms have been piecemeal responses to certain elements that the majority sees as no longer defensible. The inability to retire from the chamber may perhaps be the next indefensible element which is due for such a reform. Whether its time has yet come remains to be seen.

Meg Russell

1 October 2010

APPENDIX 2: MEMORANDUM FROM THE CLERK OF THE PARLIAMENTS

Leave of Absence

When I recently attended the Group, I undertook to submit a note on the proposals which I mentioned for changes to the leave of absence system. This note fulfils that commitment.

I attach a background note on the system of leave of absence and the main developments since its introduction in 1958, which includes in paragraph 1 the current rules on leave of absence, as set out in the *Companion*, and the facilities at the House which those on leave of absence are entitled to use.

As indicated in the *Companion*, the Clerk of the Parliaments writes before the beginning of every Parliament to each Member who was on leave of absence at the end of the previous Parliament to ask whether they wish to apply for leave again.

At present 20 Members are on leave of absence. Some Members have sought leave through reasons of ill health or infirmity which in practice makes it difficult or impossible for them to attend the House; some because active membership of the House is incompatible with professional commitments, for example, diplomatic or inter-Governmental positions; and some because they do not wish to play any part in the work of the House or to abide by the terms of the Code of Conduct. Under paragraph 4, the Code's provisions do not apply to those on leave of absence. Only a small number of Members terminate leave of absence once granted.

Leave of absence was essentially introduced to deal with poor or non-attendance by hereditary peers and with the issue of "backwoodsmen" who very rarely attended the House but could come forward in numbers to vote on major issues when required. Since the passing of the House of Lords Act 1999, the number of Members on leave of absence has declined. However, I have been considering in the early months of the present Parliament whether the scheme could be adapted and promoted to meet current circumstances.

One of the factors that has led me to do this is the requirement under paragraph 5 of the Code of Conduct for Members to sign an undertaking at the start of each Parliament to abide by the Code. There is no provision for Members to sign the undertaking other than when they attend the House to take the oath. A member who does not sign such an undertaking, and who is not on leave of absence, is in breach of the Code, as confirmed in paragraph 6 of the Guide to the Code. I have reminded the Chief Whips and the Convenor of the Crossbench Peers of this provision, but 24 Members (not on leave of absence) have yet to take the oath in this Parliament.

With these points in mind, the Group may wish to recommend that proposals should be put to the Procedure Committee to strengthen the leave of absence arrangements along the following lines:

- The Clerk of the Parliaments, in consultation with the Chief Whips and the Convenor, should take early steps to ensure that those Members who have not so far signed the undertaking to abide by the Code of Conduct should either do so or take leave of absence. It is for consideration whether those Members who do not respond to a second reminder should nonetheless be granted leave of absence. This would ensure that those Members are no longer in breach of the Code.
- At the beginning of each session of Parliament, in addition to writing to those currently on leave of absence, the Clerk of the Parliaments should

write to those Members who did not attend in the previous session asking them to consider the option of seeking leave of absence.

- It would be possible to write a similar letter to a slightly wider range of Members: for example, those who only attended once or twice in the previous session; or who did not attend at all in the last six months of the previous session; and perhaps to those Members who it is known are not in a position to attend the House in the foreseeable future.
- I also suggest that the former practice whereby leave of absence was granted to those Members who have not specifically applied for it but have failed to reply to a letter from the Clerk asking to know their wishes, could usefully be revived.
- It would be possible to increase the period of notice (one month) required before a Member's leave of absence is terminated. However, on balance, I do not recommend such a change. The purpose of my proposals is to prompt more Members to take leave of absence and a longer period of notice could serve as a disincentive, although I do not anticipate that many Members will in practice seek to terminate.

These proposals may raise the issue — often debated in the past — of whether a Member on leave of absence can be prevented from attending the House. At the end of the day, the terms of the Writ of Summons must prevail, but I think it unlikely that a Member would insist on attending the House between giving notice of termination of leave of absence and actual termination.

The Chairman invited me to mention instances when specific aspects of the leave of absence scheme have arisen. I can recall very few instances when the one month termination notice has caused any difficulty at all. The one case I do recall is that of Lord Olivier who was most anxious to speak in a debate on an unstarred question while on leave of absence but who was persuaded by the usual channels to sit on the steps of the Throne instead.

I cannot pretend that these proposals will in themselves provide anything like a full answer to the broader issue raised in the Group's terms of reference. However, in the absence of legislation to permit Members to retire from the House, the reforms which I suggest might go some way to remove the non-attending Member or the rare attender from active membership; and it might well encourage some other Members — even those who hitherto have been active in the House — to consider standing down when they are less able to play an active part in the work of the House.

I should add that if the Group is attracted to some or all of the above proposals, I would in due course prepare a more detailed proposal.

Michael Pownall

7 December 2010

BACKGROUND NOTE: LEAVE OF ABSENCE

Introduction

The Companion to the Standing Orders gives the following explanation of Leave of Absence:

1.27 Members of the House are to attend the sittings of the House. If they cannot attend, they should obtain leave of absence.

1.28 At any time during a Parliament, a member of the House may obtain leave of absence for the rest of the Parliament by applying in writing to the

Clerk of the Parliaments. Before the beginning of every Parliament the Clerk of the Parliaments writes to each member who was on leave of absence at the end of the preceding Parliament to ask whether he wishes to apply for leave of absence for the new Parliament. The House grants leave to those who so apply. In addition, the Dissolution Notice sent to all members of the House at the opening of a new Parliament invites other members who wish to apply to communicate with the Clerk of the Parliaments.

1.29 Directions relating to those on leave of absence are as follows: (a) a member of the House who has been granted leave of absence is expected not to attend sittings of the House until his leave has expired or been terminated, except to take the oath of allegiance;

(b) a member of the House on leave of absence who wishes to attend during the period for which leave was granted is expected to give notice in writing to the Clerk of the Parliaments at least one month before the day on which he wishes to attend; and his leave is terminated one month from the date of this notice, or sooner if the House so directs;

(c) a member of the House on leave of absence may not act as a supporter in the ceremony of introduction;

(d) a member of the House on leave of absence may not vote in the election of the Lord Speaker or in by-elections for hereditary peers.

1.30 Members of the House who are on leave of absence, or who are disqualified from participation in the proceedings of the House as Members of the European Parliament or as judges, enjoy access to the following facilities:

(a) they may apply for places for their spouses at the State Opening of Parliament, and the usual number of places at such functions as The Queen's Birthday Parade (Trooping the Colour);

(b) they may use the Library, the Dining Room, and other facilities of the House outside the Chamber, and may obtain tickets for the Public Gallery. Their spouses enjoy the same facilities as the spouses of other members of the House;

(c) they may sit on the steps of the Throne during a sitting of the House;

(d) they may receive parliamentary papers.

1.31 Retired bishops are entitled to sit on the steps of the Throne and use the facilities of the House outside the Chamber.

1.32 Rights of access enjoyed by members who are suspended from the service of the House are cancelled for the duration of the suspension. Members who are suspended may not enter the parliamentary estate, including as guests of other members.

History

The leave of absence scheme is governed by Standing Order 22 which dates from 16 June 1958. Although the practice of granting leave of absence has a far longer history, with an earlier, briefer Standing Order agreed in 1889, the scheme was reinvigorated and expanded in 1958 following growing concern with the problem of low or non-attendance among large sections of the membership. The problem at that time was illustrated by the fact that almost half the membership had never taken the Oath.

The debates on the proposed scheme took place in the context of the Life Peerages Act 1958, and for many of the participants the arguments for the scheme were the same as those for changing the composition of the House: “the objective which all of us desire is that we should be, and be seen to be, an efficient and workmanlike House of Parliament, playing a limited but a definite and valuable part in the Constitution of our country” (The Earl of Home, 16 June 1958, HL Debates col 1005).

The problem of poor attendance was linked to the problem of ‘backwoodsmen’ — peers who did not attend the House but who would come forward in large numbers to vote when required. Leave of absence provided a formal mechanism to permit absence; it also provided an expectation that members who were granted leave of absence would not attend the sittings of the House during the specified period unless they gave specific prior notice. The latter point was one on which much of the debate on the scheme turned.

The question of *vires*

The proposal for an expanded scheme for leave of absence was subject to extended and heated debate on several occasions between 1956 and 1958. The principal point at issue was whether the expectation for members on leave of absence not to attend the House amounted to a prohibition, and therefore deprived those members of their right to sit and vote in the House.

Those who opposed the scheme argued that a peer in receipt of a Writ of Summons had a duty and a right to attend which could not be qualified or nullified by any action of the House. In particular, the requirement to give notice in order to attend before the period of leave had expired, was controversial. Indeed, such was the opposition to this measure that the initial proposal for a three month notice period was replaced with a one month period when the draft standing orders were put to the House for agreement.

Speaking in the debate on 16 June 1958, the Lord Chancellor was adamant that the scheme did not prevent peers from exercising their rights but that it was “perfectly proper for the House corporately to announce its expectations. If someone does not fit in and fall in with those expectations, then it is a matter for him to consider what view he takes of his own conduct” (HL Debates Col 936). The Leader of the House, the Earl of Home, reiterated the position in stressing that there was “no attempt to prevent a Peer from exercising his right to sit. We cannot do so and are not trying to do so. If a Peer feels impelled to come back and talk in debate at no notice at all, he will do so and nobody can stop him” (HL Debates Col 945).

The contradictions inherent in the scheme were illustrated in 1960 when Lord Delamare, resident in Kenya, wished to have his leave of absence terminated in order to participate in a debate. On 23 March 1960 the Leader of the House moved a motion to have the leave terminated forthwith. During the debate Viscount Stansgate referred to the proceedings as a farce since, even if the motion was defeated, there was nothing to prevent Lord Delamare from attending the House whenever he chose.

Procedural safe-guards

Clearly one area of concern was the notion that members could be granted leave without having actively sought it and in some cases without wishing to be granted it. Consequently, revisions of the scheme focused to a large extent on the way in which ‘applications’ for leave were solicited. When it was first introduced applications for leave of absence were invited by writing to all Members at the start

of a new Parliament, and thereafter at the start of each session to those who had not attended the House for the preceding session, and new members for whom a session had elapsed since the issue of their Writ of Summons. The letter was sent by the Lord Chancellor; those members who failed to respond within 28 days were deemed to have applied for Leave of Absence, which was granted automatically.

In 1967 it was agreed to restrict the group of peers to whom the Lord Chancellor wrote to those already on Leave of Absence and those who had failed to attend the House in the previous session. Again, Lords failing to respond within 28 days were granted Leave of Absence.

Additional safeguards were subsequently built in to the process—a review in 1975 recommended giving peers more time to reply: members who had not replied to the letter within 8 weeks should be sent a reminder, and only after a further 2 weeks had elapsed should they be deemed to have applied for leave of absence. The Leave of Absence Committee (such a committee was appointed from 1958 to 1991) was empowered to decide in appropriate cases that no further action should be taken, i.e. that despite a failure to respond to the letter or reminder, a member should continue on the list of peers who have not applied for leave of absence. The same review reinstated writing to all members of the House only at the beginning of a new Parliament.

Declining relevance

By 1988 the administration of the Leave of Absence scheme was proving burdensome and the experience of the beginning of a new parliament prompted a review by the Leave of Absence Committee, which was subsequently reported on by the Procedure Committee. The 1988 Procedure Committee report referred to “elaborate administrative machinery” for identifying members who should be granted leave of absence. The process, which consisted of a trawl of all members, followed by a reminder letter, two discreet periods for members to respond, and furthermore cross-referencing members who did not reply but who nonetheless attended, took months to complete. It was also found that this exercise did little more than to establish what was in most cases self-evident: of the 162 members who applied for leave of absence in 1988, 124 were already on leave of absence at the end of the previous parliament.

It was also noted that the scheme had become increasingly marginal in relevance. The number of peers on leave of absence was falling rapidly: at the beginning of the scheme the number of peers on leave was more than the average number attending the House; by 1988 the levels of activity in the House, and the number who attended it, had risen sharply, with the number of those on leave falling to around half the number who attended regularly.

Despite this it was recognised that there was a continuing need to provide a mechanism to ‘regularise the position’ of those peers who took seriously their Writ of Summons but who, for whatever reason, were unable to attend the House. The scheme was therefore not abolished but its operation reformed so that leave of absence would only be granted to those peers who asked for it, and that no leave would be granted by default. The revised scheme abolished the general trawl; the Clerk of the Parliaments was required only to write to those peers who were on leave at the end of the previous parliament. Other members who wished to apply for leave were advised to contact the Clerk of the Parliaments. There have been no further changes to the operation of the scheme since 1988.

Michael Pownall

7 December 2010